

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Simon Wang	Team: Team # 5	CCRB Case #: 201103208	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 03/12/2011 10:01 PM	Location of Incident: § 87(2)(b)	Precinct: 77	18 Mo. SOL 9/12/2012	EO SOL 9/12/2012	
Date/Time CV Reported Sun, 03/13/2011 8:44 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sun, 03/13/2011 8:44 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Vitaliy Zelikov	01346	936353	PBBN

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Daniel Delpino	11853	948868	PBBN
2. POM John Yen	05068	949815	PBBN

Officer(s)	Allegation	Investigator Recommendation
A.SGT Vitaliy Zelikov	Abuse: Sgt. Vitaliy Zelikov supervised the entry and search of § 87(2)(b)	§ 87(2)(b)
B.SGT Vitaliy Zelikov	Discourtesy: Sgt. Vitaliy Zelikov spoke obscenely and rudely to § 87(2)(b)	§ 87(2)(b)
C.SGT Vitaliy Zelikov	Force: Sgt. Vitaliy Zelikov used pepper spray against § 87(2)(b)	§ 87(2)(b)
D.SGT Vitaliy Zelikov	Force: Sgt. Vitaliy Zelikov pointed his gun at § 87(2)(b)	§ 87(2)(b)

### Case Summary

On March 13, 2011, § 87(2)(b) filed the following complaint with IAB. On the same date, § 87(2)(b) contacted the CCRB by phone to file this complaint. On March 18, 2011, his complaint to IAB was received at the CCRB via referral number 11-11452. On March 12, 2011, at approximately 10:01 p.m., § 87(2)(b) was inside his home at § 87(2)(b) in Brooklyn. His daughter § 87(2)(b) and his stepdaughter § 87(2)(b) reside with § 87(2)(b) and were in the apartment. § 87(2)(b)'s boyfriend § 87(2)(b) was visiting. Sgt. Vitaliy Zelikov, PO John Yen and PO Daniel Delpino entered the apartment and arrested § 87(2)(b) for § 87(2)(b). The following allegations resulted:

- **Allegation A – Abuse of Authority:** Sgt. Vitaliy Zelikov supervised the entry and search of § 87(2)(b) § 87(2)(g)
- **Allegation B – Discourtesy:** Sgt. Vitaliy Zelikov spoke obscenely and rudely to § 87(2)(b)
- **Allegation C – Force:** Sgt. Vitaliy Zelikov used pepper spray against § 87(2)(b)
- **Allegation D – Force:** Sgt. Vitaliy Zelikov pointed his gun at § 87(2)(b) § 87(2)(g)

### Results of Investigation

#### Civilian Statements

##### Complainant: § 87(2)(b)

- § 87(2)(b)

#### CCRB Testimony

On March 13, 2011, § 87(2)(b) filed the following complaint with IAB and provided a brief statement. On March 17, 2011, § 87(2)(b) provided a phone statement to the CCRB. On June 10, 2011, § 87(2)(b) was interviewed at the CCRB. § 87(2)(b)'s attorney § 87(2)(b) was present during the interview. § 87(2)(b)'s interviews are summarized below with discrepancies noted.

§ 87(2)(b) lives in § 87(2)(b) on the top floor of § 87(2)(b) a four story apartment building. There are four apartments in total on the fourth floor. The building is not a public housing building. However, there are signs posted on the exterior of the building warning that trespassers will be prosecuted. § 87(2)(b) resides in a two-bedroom apartment with his § 87(2)(b)-old daughter § 87(2)(b) his § 87(2)(b)-old stepdaughter § 87(2)(b) and § 87(2)(b)'s mother who is his girlfriend. During his CCRB interview, § 87(2)(b) drew the layout of his apartment on a piece of paper which he dated and initialed. He labeled the rooms and the front door of the apartment. (encl.7e)

On March 12, 2011, at approximately 10:01 PM, § 87(2)(b) was alone in bed inside his bedroom (hereafter “bedroom 2”). § 87(2)(b) was wearing a pair of boxer shorts and no shirt.

He was watching television while § 87(2)(b) and § 87(2)(b) were with their friend § 87(2)(b) elsewhere in the apartment. His bedroom door was closed, but § 87(2)(b) believed that § 87(2)(b) and § 87(2)(b) were in the living room while § 87(2)(b) was inside her bedroom (hereafter “bedroom 1”). § 87(2)(b) s mother was not present that evening. § 87(2)(b) heard a commotion coming from outside his bedroom door which sounded like people running in the living room. § 87(2)(b) also heard § 87(2)(b) yelling, “Loose me. Loose me. Get off me.” § 87(2)(b) asked what was occurring, but received no answer. § 87(2)(b) exited his bedroom and saw an officer, identified by the investigation as PO John Yen of Patrol Borough Brooklyn North, close to § 87(2)(b) in the bedroom 1 doorway. § 87(2)(b) described PO Yen as Asian male, 5’8” tall, with a regular build. § 87(2)(b) could not recall what PO Yen and § 87(2)(b) were doing to each other. § 87(2)(b) and § 87(2)(b) were standing near the doorway yelling, “Loose him” and imploring PO Yen to let go of § 87(2)(b). § 87(2)(b) and § 87(2)(b) were not touching PO Yen or § 87(2)(b).

An officer identified by the investigation as Sgt. Vitaliy Zelikov was standing in the living room next to the front door. § 87(2)(b) described Sgt. Zelikov as a muscular white male who was approximately 6’0” tall. Sgt. Zelikov held a baton in his right hand above his head while holding a can of pepper spray in his left hand, at arm’s length, pointed at § 87(2)(b). He was visible to § 87(2)(b) because of a direct line of sight down the hallway towards the front door. § 87(2)(b) wanted to approach an officer to ask what was happening, but did not want to approach PO Yen because he was occupied with § 87(2)(b). § 87(2)(b) was not concerned with what was happening between PO Yen and § 87(2)(b) because he was focused on approaching Sgt. Zelikov, who was unengaged and therefore appeared to be more approachable. As § 87(2)(b) began to walk down the hallway towards the living room, PO Yen and § 87(2)(b) entered bedroom 1 and were no longer visible to § 87(2)(b).

§ 87(2)(b) approached Sgt. Zelikov and asked, “Officer what seems to be the problem?” Sgt. Zelikov answered, “Get the fuck back, get the fuck back.” § 87(2)(b) replied, “This is my apartment, what seems to be the problem?” Sgt. Zelikov continued to yell, “Get the fuck back! Get the fuck back!” § 87(2)(b) complied with the command and moved back. He was standing at the threshold between the hallway leading to the bedrooms and the living room when Sgt. Zelikov discharged a burst of pepper spray towards him. Sgt. Zelikov was on the other side of the living-room, approximately fifteen feet away. When Sgt. Zelikov was pepper spraying § 87(2)(b), PO Yen and § 87(2)(b) were in bedroom 1 where § 87(2)(b) and § 87(2)(b) had also moved into. § 87(2)(b) was not sprayed in the eyes and retained his ability to see, but found it difficult to breathe. § 87(2)(b) walked into bedroom 2 and opened a window to get fresh air. § 87(2)(b) remained at the window for less than a minute.

He then exited bedroom 2 and walked back into the hallway. Sgt. Zelikov was standing outside the door of bedroom 1 and was no longer holding his baton or pepper spray. § 87(2)(b) again asked, “What seems to be the problem?” Sgt. Zelikov again yelled, “Get the fuck back.” § 87(2)(b) backed away, but Sgt. Zelikov drew his gun from his holster on his right side and held it with both hands, pointing it at § 87(2)(b) s head. § 87(2)(b) came out of bedroom 1 and stepped in front of § 87(2)(b) blocking her father from the gun. She was crying and said, “Please don’t shoot my father.” Sgt. Zelikov backed away, but § 87(2)(b) could not see what if anything he did. He was focused on § 87(2)(b). § 87(2)(b) did not see whether Sgt. Zelikov lowered his gun. At that point, approximately fifteen police officers in both uniform and plainclothes entered the apartment. § 87(2)(b) then lost sight of Sgt. Zelikov. Approximately

seven or eight of those officers entered bedroom 1. § 87(2)(b) could only recall that three of those officers were in plainclothes. A third officer in plainclothes was a tall and muscular black male. Another plainclothes officer was a short Hispanic male. As § 87(2)(b) was still standing next to bedroom 2, he did not see what took place inside bedroom 1. § 87(2)(b) did not recall whether he heard any sounds coming from inside the bedroom 1. In his phone statement on March 17, 2011, § 87(2)(b) alleged that an officer pepper sprayed both § 87(2)(b) and § 87(2)(b). He did not reiterate these allegations in his CCRB statement.

§ 87(2)(b) was dragged out of the apartment in handcuffs by an officer who remains unidentified. § 87(2)(b) did not pay attention to § 87(2)(b) and did not see whether he had any injuries. All of the officers followed them out of the apartment. § 87(2)(b) went to the doorway of his apartment to see what was happening to § 87(2)(b). § 87(2)(b) was face down in the hallway to the left of the door near the stairwell with an officer on top of him, placing a knee in his back. § 87(2)(b) asked out loud to no officer in particular what had happened. Sgt. Zelikov, who was standing between § 87(2)(b) and § 87(2)(b) with his back to § 87(2)(b) stated, "Get the fuck back in your apartment." § 87(2)(b) closed his door and did not exit his apartment again until the police officers had left. No police officers ever spoke to § 87(2)(b) to explain what had occurred. § 87(2)(b) denied that he was a smoker and did not detect the smell of smoke inside his apartment or the hallway. § 87(2)(b) could only smell pepper spray.

**Witness:** § 87(2)(b)

- § 87(2)(b)

**CCRB Testimony**

On June 10, 2011, § 87(2)(b) was interviewed at the CCRB. Her father, § 87(2)(b) and their attorney § 87(2)(b) were present in the interview room. § 87(2)(b) sat behind § 87(2)(b) out of her view and did not speak during her interview.

On March 12, 2011, § 87(2)(b)'s sister, § 87(2)(b) and § 87(2)(b)'s boyfriend, § 87(2)(b) had gone to a store to buy a gift for a baby shower. § 87(2)(b) did not know when § 87(2)(b) and § 87(2)(b) left for the store. At approximately 10:01 PM, § 87(2)(b) was in her bedroom when she heard the sound of running coming from outside her bedroom door. § 87(2)(b) exited her bedroom and saw § 87(2)(b) in the hallway between § 87(2)(b)'s bedroom and the living room. Their apartment front door locks automatically when closed and § 87(2)(b) did not see how anyone entered the apartment. § 87(2)(b) told her subsequently that she opened the door with her keys and attempted to close the door on the police officers who then pushed the door open. Sgt. Zelikov attempted to grab § 87(2)(b)'s arms inside the apartment. § 87(2)(b) was pulling away and struggling. Sgt. Zelikov was holding a baton in his right hand and hitting § 87(2)(b) in the legs. § 87(2)(b) did not remember how many times § 87(2)(b) was hit. § 87(2)(b) was twisting his upper torso while standing, in an attempt to break free of Sgt. Zelikov. § 87(2)(b) was standing close to them and yelling, "Stop!" She was not making physical contact with either Sgt. Zelikov or § 87(2)(b). § 87(2)(b) was calling out for § 87(2)(b) to come out of his room. PO Yen was standing in the living room near the front door and appeared to be too fearful to take any action. § 87(2)(b) smelled pepper spray in the air. § 87(2)(b) smelled pepper spray before § 87(2)(b) came out of his room. § 87(2)(b) never saw any officer holding anything resembling a pepper spray can and did not see any officer discharge any pepper spray.

Several other officers, whom § 87(2)(b) could not identify, entered the apartment and grabbed § 87(2)(b). § 87(2)(b) continued resisting, and they entered § 87(2)(b)'s bedroom. Sgt. Zelikov was no longer engaged in subduing § 87(2)(b). Approximately 20 seconds after § 87(2)(b) had opened her bedroom door, § 87(2)(b) came out of his room and asked Sgt. Zelikov what was happening. Sgt. Zelikov yelled, "Shut the fuck up. Shut the fuck up." Sgt. Zelikov then drew his gun and pointed it at § 87(2)(b)'s head. Sgt. Zelikov held the baton in one hand and the gun in the other and pointed the gun at § 87(2)(b) with both arms fully extended in front of him crossed at the wrist. § 87(2)(b) stepped directly in front of § 87(2)(b) blocking the gun and said, "Please don't shoot my father." Sgt. Zelikov kept the gun in the same position pointed at § 87(2)(b) for a further 20 seconds. § 87(2)(b) was not as tall as her father, so the gun remained pointed at § 87(2)(b). While Sgt. Zelikov kept the gun pointed, he was saying something which § 87(2)(b) could not recall. § 87(2)(b) remained in one place and stated, "If you're going to shoot me, then shoot me." After § 87(2)(b) stepped in front of § 87(2)(b) Sgt. Zelikov lowered his gun. § 87(2)(b) did not recall whether Sgt. Zelikov returned his gun to the holster.

§ 87(2)(b) then entered her bedroom and saw § 87(2)(b) lying face-down on top of § 87(2)(b)'s bed. Three to four officers, including PO Yen, were on top of § 87(2)(b) and had control of one of his arms, but § 87(2)(b) continued to resist, and was flailing his free arm. § 87(2)(b) was also in the room and crying. § 87(2)(b) was twisting his torso, and moved onto the ground. Officers placed handcuffs on one wrist, but could not bring both wrists together, so they applied another pair of handcuffs to the other wrist. Officers then locked both pairs together. After § 87(2)(b) was handcuffed, he stopped resisting. Officers led § 87(2)(b) out of the apartment into the hallway. § 87(2)(b) did not see what occurred to § 87(2)(b) outside the apartment. § 87(2)(b) went into the hallway to get fresh air after police officers had removed § 87(2)(b). Nothing had been damaged inside § 87(2)(b)'s bedroom, but there was clothing strewn everywhere. The apartment's front door, which was made of metal, was damaged and could not close properly. § 87(2)(b) never detected the smell of smoke in the apartment or in the building hallway.

### **Attempts to Contact Civilians**

§ 87(2)(b) refused to allow the undersigned to speak to § 87(2)(b) by phone and stated that all contacts by the CCRB could only take place with his attorney present. Although the undersigned requested § 87(2)(b)'s presence during § 87(2)(b) and § 87(2)(b)'s interview, § 87(2)(b) did not accompany them to the CCRB for their interview. On July 15, 2011, the undersigned contacted § 87(2)(b)'s attorney § 87(2)(b) and scheduled an appointment with him and § 87(2)(b) for July 22, 2011. The undersigned received a call from § 87(2)(b) on the day of the interview stating that § 87(2)(b) refused to appear. The undersigned made three further calls to § 87(2)(b) on July 22, August 16 and September 15, 2011, to interview § 87(2)(b). § 87(2)(b) stated that but no interview date was scheduled because § 87(2)(b) refused to make herself available.

§ 87(2)(b) refused to provide independent contact information for § 87(2)(b). Although he stated that § 87(2)(b) could be contacted through § 87(2)(b) who never cooperated with the investigation, § 87(2)(b) stated that he was not § 87(2)(b)'s attorney. A Lexis-Nexis search and arrest documents yielded an address for § 87(2)(b) but not a phone number. First and final call request letters were sent to § 87(2)(b) on June 24, and July 15, 2011. None of the letters sent to § 87(2)(b) have been returned as undelivered by the US Postal Service. There has been no response from § 87(2)(b). As such, § 87(2)(b) was unavailable for this investigation.

## **NYPD Statements:**

### **Subject Officer: SGT VITALIY ZELIKOV**

- *Sgt. Zelikov is a § 87(2)(b)-old white male, who is 6'0" tall and weighs 205 pounds. He has brown hair and green eyes.*
- *On March 12, 2011, Sgt. Zelikov was the Impact supervisor. He worked with PO Yen. They were in uniform, and assigned to a marked RMP.*

### **Memo Book**

On March 12, 2011, Sgt. Zelikov noted in his memo book that at 7:55 p.m. he was conducting a vertical patrol (10-75 V) inside § 87(2)(b). At 8:01 p.m. he had one under arrest, § 87(2)(b). The investigation has determined that Sgt. Zelikov incorrectly recorded the time by 2 hours.

### **CCRB Statement**

On March 12, 2011, at approximately 10:00 p.m., Sgt. Zelikov and PO Yen were conducting a vertical patrol inside § 87(2)(b) in Brooklyn, which is a multi-dwelling apartment building. The building is not a NYCHA building, but Sgt. Zelikov did not know whether the building was an FTAP building. They were conducting a vertical patrol because the building was the source of frequent complaints of disputes and drug use. Sgt. Zelikov and PO Yen were walking down the stairwell from the roof when they observed a black male identified by the investigation as § 87(2)(b) smoking marijuana on the 4<sup>th</sup> floor landing of the stairwell. Sgt. Zelikov did not recall whether § 87(2)(b) was alone. § 87(2)(b) was smoking a brown cigar and Sgt. Zelikov could smell the odor of burnt marijuana.

Sgt. Zelikov and PO Yen walked down the stairs towards him. Upon seeing the officers, § 87(2)(b) immediately ran down the 4<sup>th</sup> floor hallway. Sgt. Zelikov and PO Yen both identified themselves verbally as police officers, instructed him to stop and ran after him. § 87(2)(b) entered § 87(2)(b), but Sgt. Zelikov could not tell whether the door had been already open or unlocked. § 87(2)(b) did not leave Sgt. Zelikov's line of sight from the stairs to the apartment door. § 87(2)(b) attempted to close the door to the apartment, but PO Yen inserted his shoulder in the doorway before § 87(2)(b) could close it. § 87(2)(b) continued to push against the door, pinning PO Yen in the doorway. Sgt. Zelikov reached the door and assisted PO Yen, but could not open the door.

He yelled for § 87(2)(b) to back away from the door, but § 87(2)(b) did not comply. Sgt. Zelikov feared injury to PO Yen so he sprayed pepper spray into the open crack of the door. § 87(2)(b)'s face had been visible through the crack in the door momentarily, but moved his head away as Sgt. Zelikov discharged the pepper spray. Sgt. Zelikov directed the spray through the crack in the door towards where he estimated § 87(2)(b)'s head to have been based on his height. After a single discharge of pepper spray, the officers were able to open the door and entered the apartment. Sgt. Zelikov immediately holstered his pepper spray. Sgt. Zelikov believed that he and the other officers were justified in entering the apartment because they were in hot pursuit of a fleeing suspect.

Once the officers entered the apartment, it appeared as though § 87(2)(b) was the only individual who was attempting to close the door. § 87(2)(b) was swinging his arms at the police officers. PO Yen attempted to handcuff § 87(2)(b) who continued to resist, and they grappled with each other. § 87(2)(b) and PO Yen moved into a bedroom to the left of the

door. An unidentified female, whom Sgt. Zelikov could not describe, and an older male, identified by the investigation as § 87(2)(b) were also present in the apartment. § 87(2)(b) was shirtless and standing in the hallway leading to the bedrooms. He was yelling as he advanced towards Sgt. Zelikov.

Feeling threatened, Sgt. Zelikov took a defensive posture, placed his hand on his holster and instructed § 87(2)(b) to back away. Sgt. Zelikov's demeanor was guarded and alert, he denied that he felt panic. Sgt. Zelikov denied that he ever said, "Get the fuck back." Sgt. Zelikov did not recall what § 87(2)(b) was yelling. The female was in close proximity to PO Yen and § 87(2)(b) and was yelling. She appeared to have been interfering with PO Yen, but Sgt. Zelikov could not be sure because he was focused on § 87(2)(b). Sgt. Zelikov did not deploy his baton and he did not witness PO Yen deploy his baton. Pepper spray fumes were in the air, which Sgt. Zelikov detected, but he did not feel incapacitated by it. Sgt. Zelikov denied that he pulled out his pepper spray once inside the apartment, or that he discharged his pepper spray again.

§ 87(2)(b) said to Sgt. Zelikov, "I'm going to show you," before backing up into a room approximately twenty feet down the hallway to the left, which Sgt. Zelikov could not see into. Sgt. Zelikov believed that § 87(2)(b) may have gone to retrieve a weapon, so he drew his firearm, a silver Smith and Weston 9mm pistol, and held it at a downward angle pointed down the hallway. After approximately one minute, § 87(2)(b) exited the room without holding any weapons, so Sgt. Zelikov immediately returned his weapon to its holster. As Sgt. Zelikov stood with his gun drawn, PO Yen was struggling to handcuff § 87(2)(b) in the bedroom. Sgt. Zelikov used his radio and called for one additional unit, and provided the address and apartment number. Sgt. Zelikov denied that his gun was pointed at § 87(2)(b) even momentarily. There was no one else in the vicinity of the hallway in the direction which Sgt. Zelikov pointed his weapon, and at no point did a female individual step in front of him or his weapon. He did not hear anyone say to him, "Please don't shoot my father." Sgt. Zelikov did not recall § 87(2)(b) telling him, "Go ahead and shoot me," or make any remarks to him about the drawing of his weapon.

Two uniformed officers, PO Daniel Delpino and an officer he could not identify, arrived in response to Sgt. Zelikov's call for assistance. They entered the apartment and entered the bedroom in which PO Yen was attempting to handcuff § 87(2)(b). Sgt. Zelikov did not recall whether the officers entered the apartment prior to him returning his gun to its holster. After § 87(2)(b) reemerged from his bedroom, Sgt. Zelikov did not take any further action regarding him, and was focused on arresting § 87(2)(b) and removing him from the apartment. PO Yen and PO Delpino managed to handcuff § 87(2)(b) after which he stopped resisting. A pair of male officers in plainclothes whom Sgt. Zelikov could not identify arrived and entered the apartment. However, they saw that the situation was already under control, and left without taking any action. The officers brought § 87(2)(b) out of the building and he was placed in a patrol car. § 87(2)(b) was never placed on the ground in the hallway outside the apartment, and Sgt. Zelikov did not observe § 87(2)(b) follow the officers out of the apartment. Sgt. Zelikov denied that he or any other officer stated to § 87(2)(b) "Get the fuck back in the apartment." Sgt. Zelikov did not observe any injuries on § 87(2)(b) and did not recall whether § 87(2)(b) requested medical treatment at the precinct stationhouse.

Sgt. Zelikov did not know how § 87(2)(b) disposed of the marijuana cigar, but ventured that he could have thrown it down the stairwell or discarded it once inside the apartment.

**Witness Officer: PO JOHN YEN**

- *PO Yen is a § 87(2)(b) -old Asian male, who is 5'10" tall and weighs 170 pounds. He has black hair and brown eyes.*
- *On March 12, 2011, PO Yen was Sgt. Zelikov's operator. They were on patrol from 3:00 p.m. to 11:35 p.m. They were dressed in uniform and assigned to a marked van.*

### **Memo Book**

On March 12, 2011, PO Yen noted in his memo book that at 7:55 p.m. he was conducting a vertical patrol (10-75 V) inside § 87(2)(b) At 8:01 p.m. he had one under arrest for

§ 87(2)(b)

The investigation has determined that PO Yen incorrectly recorded the time by 2 hours

### **CCRB Statement**

On November 30, 2012, PO John Yen was interviewed at the CCRB.

An unknown number of other police officers, whom PO Yen could not recall, accompanied PO Yen and Sgt. Zelikov during their vertical patrol at § 87(2)(b) in Brooklyn.

PO Yen, Sgt. Zelikov, and other officers were walking up the stairwell when they saw § 87(2)(b) smoking a marijuana cigarette at the landing of the stairwell above them. PO Yen did not recall which color the marijuana cigarette was. PO Yen could tell that § 87(2)(b) was smoking marijuana because the cigarette was lit, and there was an odor of burnt marijuana. Upon making eye contact with the officers, § 87(2)(b) dropped the cigarette and fled into an apartment approximately two feet from him. PO Yen did not have an opportunity to yell any instructions to § 87(2)(b) because of the speed with which § 87(2)(b) had fled. PO Yen did not see whether the door to the apartment was open or closed when § 87(2)(b) fled. PO Yen was not sure whether he heard another officer yell out, "Stop." The stairwell was very short, so PO Yen chased after § 87(2)(b) and inserted his body into the doorway of the apartment as the door was closing. PO Yen was the first officer to reach the door. PO Yen did not recall which part of his body was stuck in the doorway, but he did not receive any injuries. PO Yen pushed against the door, but the door was repeatedly pushed back against him. PO Yen was pushing on the door in order to extricate himself but also to enter the apartment. PO Yen believed that he was engaging in hot pursuit, which justified his entry into the apartment to apprehend § 87(2)(b) An officer whom he could not see, directed pepper spray through the door. PO Yen was not cognizant of the position of the other officers around him.

After the pepper spray was directed through the door, PO Yen entered the apartment. He was focused on § 87(2)(b) and did not recall whether there were others inside the apartment upon opening the door, but there was a lot of yelling and screaming. Because PO Yen could not force the door open initially, he felt as though there was more than one person on the other side of the door. However, he could not recall how many people were close to the door once it was opened. PO Yen grabbed § 87(2)(b) and attempted to place handcuffs on him. § 87(2)(b) resisted and they grappled with one another. § 87(2)(b) was kicking and swinging his arms, but PO Yen was not hit, and was not injured. Another officer identified by the investigation as PO Delpino grabbed § 87(2)(b) and all three of them moved around the apartment and fell into another room. § 87(2)(b) continued to struggle with them. PO Yen and the other officer were able to each place a pair of handcuffs on one hand, and joined them together. PO Yen did not recall whether PO Delpino was the other officer.

PO Yen was not aware of what the other officers were doing as he was attempting to handcuff § 87(2)(b) PO Yen did not recall whether there was another male § 87(2)(b) who was



older than § 87(2)(b) inside the apartment. PO Yen did not see any other officer use pepper spray once already inside the apartment. PO Yen could smell pepper spray inside the apartment, but was not sure whether he felt any of its effects such as difficulty breathing. PO Yen did not see whether Sgt. Zelikov drew his weapon inside the apartment. PO Yen did not recall whether he heard Sgt. Zelikov yell, "Get the fuck back." PO Yen recalled that there were females in the apartment. He did not hear any of them yell out, "Please don't shoot my father." PO Yen did not personally make a call for assistance, but additional officers did arrive. PO Yen did not recall who they were or whether they were in uniform or plainclothes. The officers came in and removed § 87(2)(b) from the apartment. PO Yen did not recall whether any of the residents in the apartment followed the officers out of the apartment. PO Yen did not hear any officer say, "Get the fuck back in your apartment."

**Witness Officer: PO DANIEL DELPINO**

- *PO Delpino is a § 87(2)(b)-old Hispanic male, who is 5'5" tall and weighs 165 pounds. He has brown hair and blue eyes.*
- *On March 12, 2011, PO Delpino was assigned to a solo foot-post for Operation Impact. He was dressed in uniform.*

**Memo Book**

On March 12, 2011, PO Delpino noted in his memo book that at 9:55 p.m., one male was stopped inside § 87(2)(b) in Brooklyn. At 10:01 p.m., § 87(2)(b) was arrested. They arrived at the 77<sup>th</sup> Precinct stationhouse at 10:10 p.m.

**OLBS and Complaint Report**

Both the OLBS and Complaint Report prepared by PO Delpino for § 87(2)(b)'s arrest indicated that PO Delpino observed § 87(2)(b) smoking a marijuana cigar. § 87(2)(b) fled from the officers, and resisted arrest by flailing his arms and refusing to be handcuffed.

**CCRB Statement**

On December 1, 2011, PO Daniel Delpino was interviewed at the CCRB.

On March 12, 2011, at approximately 10:01 p.m., PO Delpino was conducting a vertical patrol with approximately four officers at § 87(2)(b) in Brooklyn. PO Delpino confirmed that Sgt. Zelikov and PO Yen were amongst the officers, but did not recall any other officers that were there. As the officers were walking up the stairwell from the third to the fourth floor, they observed § 87(2)(b) sitting on the landing of the stairwell on the fourth floor. § 87(2)(b) was smoking a brown cigarette, and PO Delpino smelled the odor of marijuana. Upon seeing the officers, § 87(2)(b) dropped the cigarette and ran into an apartment approximately ten feet from where he was standing.

PO Delpino retrieved the marijuana cigar, which was on the ground where § 87(2)(b) had been sitting. PO Delpino did not witness how officers gained entry despite § 87(2)(b)'s attempt to close the door on them. PO Delpino entered the apartment after other officers had entered in order to arrest § 87(2)(b) because they were in hot pursuit. Upon entering the apartment, PO Delpino detected a faint odor of pepper spray in the air, but did not see any officer discharge pepper spray at any time. § 87(2)(b) was flailing his arms and kicking. PO Delpino did not recall which other officer was engaged in subduing § 87(2)(b) because the apartment was dark. PO Delpino also cited the darkness as the reason why he could not see whether there were any other civilians besides § 87(2)(b) inside the apartment. PO Delpino and an officer

identified by the investigation as PO Yen wrestled with § 87(2)(b) who continued to actively resist. The officers were able to handcuff § 87(2)(b) by placing one pair of handcuffs on each hand and then linking the two together. Additional officers were called to the scene who assisted in removing § 87(2)(b) from the apartment. § 87(2)(b) continued to move his body after being handcuffed. PO Delpino and the other officer carried § 87(2)(b) out of the apartment immediately, so PO Delpino did not have an opportunity to better survey the apartment. PO Delpino did not search the apartment and did not enter any area of the apartment other than where § 87(2)(b) was. PO Delpino did not see Sgt. Zelikov draw his firearm at any point, he also did not hear Sgt. Zelikov yelling out, "Get the fuck back, get the fuck back." PO Delpino did not hear any individual yelling out, "Please don't shoot my father." PO Delpino did not look back to see whether any residents of the apartment followed the officers out of the apartment, and he did not hear any officer yell to a civilian, "Get the fuck back in your apartment."

### **NYPD Documents**

#### **Roll Call**

According to the roll call from the 77<sup>th</sup> Precinct on March 11, 2011, Sgt. Zelikov was working as the Impact Supervisor. PO Yen was the sergeant's operator. PO Delpino was assigned to Impact foot post 4.

#### **SPRINT**

SPRINT job number § 87(2)(b) indicated that on March 12, 2011, at approximately 9:59 p.m., Sgt. Zelikov requested an additional unit to his location. At approximately 10:00 p.m. Sgt. Zelikov requested no further units to the location. Sgt. Zelikov verified the arrest at 10:01 p.m. Sgt. Zelikov resumed patrol at 10:06 p.m. The final disposition of a crime arrest was given at 11:48 p.m.

#### **Property Voucher**

A single marijuana cigar was vouchered as arrest evidence in § 87(2)(b)'s arrest.

#### **Command Log**

The command log from the 77<sup>th</sup> Precinct on March 12, 2011, showed that § 87(2)(b) was arrested by PO Delpino for § 87(2)(b). His physical appearance was apparently normal.

#### **Arrest for Incident and Disposition**

- All criminal charges in connection with the incident on March 12, 2011 have been dismissed. (encl. 21a-b)

#### **Status of Civil Proceedings**

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of April 9, 2012, more than nine months after the 90-day filing deadline passed, with regard to the incident.

#### **Civilians Criminal History**

- As of December 29, 2011, Office of Court Administration records reveal no criminal convictions for § 87(2)(b) or § 87(2)(b)
- § 87(2)(b)

§ 87(2)(b)

### **Civilian CCRB History**

- This is the first CCRB complaint that § 87(2)(b) and § 87(2)(b) have been a part of (encl. 3a-d).

### **Subject Officer CCRB Histories**

- Sgt. Zelikov has been a member of the service for seven years and there are no substantiated CCRB allegations against him (encl. 2a-b).

### **Conclusion**

### **Allegations Not Pleaded**

§ 87(2)(b) alleged in his phone statement to the CCRB that both § 87(2)(b) and § 87(2)(b) were pepper sprayed. He did not reiterate those allegations during his CCRB statement, and § 87(2)(b) did not make such allegations. As noted previously, § 87(2)(b) could not be contacted for this investigation. § 87(2)(g)

### **Identification of Subject Officers**

Sgt. Zelikov, PO Yen, and PO Delpino admitted that they entered § 87(2)(b)'s apartment and that other unidentified officers responded to the call for assistance and also entered the apartment. As Sgt. Zelikov was the supervising officer on scene, and called for assistance, the responsibility for entering § 87(2)(b)'s apartment lies with him and the allegation for supervising the entry is pleaded against him.

Sgt. Zelikov admitted that he confronted § 87(2)(b) inside the apartment and drew his weapon. § 87(2)(b) accused the officer who confronted him of pointing his weapon, using pepper spray, and cursing at him. Sgt. Zelikov also matched § 87(2)(b)'s description of that officer. As a result, those allegations are pleaded against him as well.

### **Investigative Findings and Recommendations**

#### **Allegation A – Abuse of Authority: Sgt. Vitaliy Zelikov supervised the entry and search of**

§ 87(2)(b)

Sgt. Zelikov, PO Yen and PO Delpino observed § 87(2)(b) smoking a cigarette which they believed contained marijuana because of the odor of burnt marijuana they detected in the air. The officers claimed that upon making eye contact with them, § 87(2)(b) fled into § 87(2)(b)'s apartment, which was within only a few feet from where he had been sitting. PO Delpino recovered and vouchered a single cigar containing marijuana in the hallway outside of the apartment. Sgt. Zelikov and PO Yen immediately entered § 87(2)(b)'s apartment in pursuit of § 87(2)(b) using force and pepper spray to gain entry. PO Delpino and other officers also entered the apartment to arrest § 87(2)(b). The officers cited the hot pursuit exception to warrantless entry into a home as justification for their entry into § 87(2)(b)'s apartment.

Warrantless entries into a home to make an arrest are considered “presumptively unreasonable.” One exception to the prohibition of a warrantless entry is that police may enter a home to effect an arrest if exigent circumstances exist to justify a warrantless entry. Factors which have been applied by both federal and state courts to determine whether exigent circumstances are present

have been: (1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) whether the suspect is reasonably believed to be armed; (3) a clear showing of probable cause to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that the suspect will escape if not swiftly apprehended; and (6) the peaceful circumstances of the entry. People v. McBride, 14 N.Y.3d 440, 446 (2010) (encl. 1a – 1g).

§ 87(2)(g)

**Allegation B – Discourtesy: Sgt. Vitaliy Zelikov spoke obscenely and/or rudely to** § 87(2)(b)

**Allegation C – Force: Sgt. Vitaliy Zelikov used pepper spray against** § 87(2)(b)

**Allegation D – Force: Sgt. Vitaliy Zelikov pointed his gun at** § 87(2)(b)

§ 87(2)(b) alleged that as he approached Sgt. Zelikov, Sgt. Zelikov yelled at him repeatedly to, “Get the fuck back.” He also alleged that at a later time, Sgt. Zelikov yelled for him to, “Get the fuck back in your apartment.” Sgt. Zelikov denied making these comments to § 87(2)(b). § 87(2)(b) alleged that Sgt. Zelikov discharged pepper spray at him inside the apartment. Sgt. Zelikov denied that he discharged pepper spray at § 87(2)(b). However, Sgt. Zelikov admitted using pepper spray when PO Yen was pinned in the doorway of the apartment and he feared that PO Yen could suffer serious physical injury. § 87(2)(b) testified that she did not witness Sgt. Zelikov discharge pepper spray while inside the apartment and had detected the odor of pepper spray prior to § 87(2)(b) exiting his bedroom. § 87(2)(b) and § 87(2)(b) both alleged that Sgt. Zelikov drew and pointed his gun directly at § 87(2)(b). Sgt. Zelikov stated that he feared for his safety after § 87(2)(b) approached him while yelling and screaming. § 87(2)(b) then backed into his bedroom, leading Sgt. Zelikov to draw his weapon because he feared that § 87(2)(b) had gone to retrieve a weapon. Sgt. Zelikov claimed that he immediately returned his gun to its holster upon seeing that § 87(2)(b) did not have a weapon. He denied that his gun was ever pointed at § 87(2)(b).

§ 87(2)(g)

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Team: 5

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Investigator: \_\_\_\_\_ Simon Wang 06/21/12  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date